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**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION**

MDL No. 1:13-md-02419

Hon. F. Dennis Saylor, IV

This Document Relates To:

*Trope, et. al. v. New England Compounding
Pharmacy, Inc., et. al.*, No. 13-cv-10345-FDS

**MOTION OF ALAUNUS PHARMACEUTICAL, LLC
TO DISMISS FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM
PURSUANT TO FED.R.CIV.P. 12(B)(6)**

Pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendant, Alaunus Pharmaceutical, LLC (“Alaunus”), by and through its counsel, moves to dismiss Plaintiffs' First Amended Complaint as to Alaunus with prejudice.

Plaintiffs, Helena Trope a/k/a Linda Trope and Lawrence Trope, wife and husband (collectively the “Tropes”), bring this product liability action against Defendants, New England Compounding Pharmacy, Inc. (“NECC”), Ameridose, LLC (“Ameridose”), Alaunus Pharmaceutical, LLC (“Alaunus”), Medical Sales Management, Inc. (“MSM”), Barry J. Cadden, Lisa Cadden, and Greg Conigliaro. Plaintiffs' Amended Complaint asserts various causes of action collectively against the defendants arising out of alleged injuries suffered by Mrs. Trope from an injection of an allegedly contaminated steroid compound known as methylprednisolone sodium succinate (“MSS”) that was purportedly manufactured and distributed by “Defendants NECC, Ameridose, Alaunus, and MSM,” and administered by her health care provider at Sinai Hospital in Baltimore, Maryland on September 21, 2012. *See Pl. Amended Compl.*, ¶¶ 14 - 18. Plaintiffs' Complaint is in ten (10) counts: Count I – Strict Liability – Manufacturing Defect; Count II – Negligence; Count III – Negligent Misrepresentation; Count IV – Breach of Express Warranty; Count V – Breach of Implied Warranty; Count VI – Violation of Maryland’s

Consumer Protection Act; Count VII – Violation of Massachusetts Consumer Protection Act; Count VIII – Damage to the Marital Relationship; Count IX – Punitive Damages; and, Count X – Piercing the Corporate Veil. *See id.*, generally.

As set forth more fully in Alaunus' Memorandum of Law in Support of Its Motion to Dismiss, which was filed contemporaneously herewith, Plaintiffs' Amended Complaint should be dismissed as to Alaunus for many reasons. The Amended Complaint does not plead sufficient facts to show that Alaunus is jointly or vicariously liable for NECC's alleged tortious conduct under an alter-ego liability theory, impermissibly "lumps" the defendants together, and does not identify Alaunus as the manufacturer or seller of any product, let alone MSS. The negligent misrepresentation and express warranty claims fail because the Amended Complaint does not show that Alaunus made any representations to Mrs. Trope or that they became part of the basis of the bargain. The claims under Maryland's and Massachusetts' Consumer Protection Act fail because MSS is not a "consumer good" within the meaning of Maryland CPA, and the Amended Complaint does not show that Alaunus committed any unfair or deceptive act or practice, or that Mrs. Trope suffered an injury or loss as a result of any such conduct. Mr. Trope's claim for "damage to the marital relationship" fails because that claim is derived from his spouse's failed claims against Alaunus. Given that all of the underlying tort claims against Alaunus are subject to dismissal and that the Amended Complaint does not support a plausible inference that Alaunus acted with "actual malice," the claim for punitive damages should be dismissed. For these reasons, the Amended Complaint should be dismissed as to Alaunus with prejudice pursuant to Fed.R.Civ.P. 12(b)(6).

Dated: April 22, 2013

Respectfully Submitted,
Alaunus Pharmaceutical, LLC,
By its Attorney,

/s/ Ryan Ciporkin

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed with the Clerk of the Court on April 22, 2013 using the CM/ECF system which sent notification of this filing to all ECF registered counsel of record via e-mail generated by the Court's ECF system.

/s/ Ryan Ciporkin

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